IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

CRP.No. 950 of 2006()

AGAINST THE ORDER IN IA.2223/2005 IN
OS.148/2001 of MUNSIFF COURT, KARUNAGAPPALLY

.....

REVN. PETITIONER/RESPONDENT

ABDUL AZEEZ KUNJU K.,
KIZHAKKEVEETTIL, PAVUMBA THEKKUM MURI,
PAVUMBA VILLAGE.

BY ADV. SRI.T.C.MOHANDAS
SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.S.BRIJESH

RESPONDENT/ PETITIONER

NANU PARAMESWARAN,
ARUVILAYIL VADAKKATHIL, PAVUMBA THEKKUM MURI,
PAVUMBA VILLAGE.

BY ADV. SRI.BRIJESH MOHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3353/06 IN CRP 950/06

DISMISSED

9/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO.950 OF 2006

Dated 9th January 2007

O R D E R

Petitioner is plaintiff and respondent the defendant in O.S.148/01 on the file of Munsiff court, Karunagappalli. Suit was decreed ex-parte. Defendant filed I.A.2223/05, an application under Order IX Rule 13 of Code of Civil Procedure to set aside the ex-parte decree. It was allowed by a non speaking order dated 8/8/2006. It is challenged in this revision petition filed under Section 115 of Code of Civil Procedure.

2. Adv.T.C.Mohandas, learned counsel appearing for petitioner and Adv.Brijish Mohan, learned counsel appearing for respondent were heard.

3. Order passed by learned Munsiff is only to the effect that as it is the second application to set aside ex-parte decree, defendant is to be burdened with heavy costs and so petition was allowed on payment of cost of Rs.1,000/-. There is no finding that there was sufficient cause for the absence of the

petitioner when he was set ex-parte and the suit was decreed. Learned Munsiff has not considered the application in the light of the provisions of Rule 13 of Order IX of Code of Civil Procedure. Without a finding that respondent was prevented by sufficient cause from appearing when the suit was called on for hearing and he was set ex-parte, the ex-parte order cannot be set aside. Hence the order is set aside. I.A.2223/05 is remanded back to learned Munsiff for fresh disposal in accordance with law. Learned Munsiff has to permit the parties to adduce evidence if so wishes and decide on the materials whether the ex-parte decree is to be set aside.

Revision petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.